HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.10437 of 2005

Between:

P. Ramesh Babu … Petitioner

And

The A.P. State Consumer Disputes Redressal Commission,

Khairtabad, Hyderabad rep. by its Registrar and two others.

… Respondents.

::ORDER::

Counsel for the petitioners: Sri V.V.N. Narasimham

Counsel for respondents 1 and 2: Government Pleader for Civil Supplies

Counsel for respondent No.3: None

February 06, 2006

Per G.S. Singhvi, CJ

This is a petition for quashing orders dated 14.7.2000 and 30.10.2001 passed by District Consumer Forum, Visakhapatnam, (for short 'the District Forum') and Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short 'the State Commission') respectively in the matter of complaint filed by respondent No.3 Sri Peethala Srinivasa Rao under Section 27 of the Consumer Protection Act, 1986 (for short 'the Act').

For deciding the issues arising in the Writ Petition, we may briefly notice the facts:

1) In pursuance of an advertisement issued by Anatha Madhava Real Estates and Constructions, Visakhapatnam, (hereinafter described as 'the Company'), respondent No.3 made an application for allotment of a plot measuring 167 sq. yds in the proposed layout in Mithilanagar, Visakhpatnam. He deposited installments of price, but the plot was not allotted to him. He then filed a complaint under Section 12 of the Act for award of damages of Rs.1,00,000/- in lieu of deficiency in the service. The same was registered as Consumer Dispute No.11 of 1999.

2) In the counter filed by the company, it was averred that the complainant had paid only Rs.12,750/- and failed to deposit the balance amount. It was further averred that layout of the scheme could not be obtained because the applicants did not pay the installments and enhanced development charges.

3) By an order dated 4.12.1999, the District Forum disposed of the complaint by directing the company to refund Rs.11,750/- to respondent No.3 with interest at the rate of 24% per annum from 25.7.1996 till the date of realization with a further direction for payment of Rs.5,000/- as compensation and Rs.1,000/- as costs. The District Forum also directed that if the opposite party fails to comply with the direction then the complainant will be entitled to interest at 15% per annum on the amount of compensation. The operative part of that order reads as under:

> "In the result, we direct the opposite party to refund Rs.11,750/- (Rs. Eleven thousand seven hundred and fifty only) with interest at 24% p.a. from 25.7.96 till date of realization. The opposite party is further directed to pay Rs.5,000/- (Rs. Five thousand only) towards compensation. The opposite party is further directed to pay Rs.1,000/- (Rs. One thousand only) towards costs. Time for compliance two months, failing which the complainant is entitled to interest at 15% p.a. from today till date of payment on the compensation amount also."

4) The company did not pay the amount to respondent No.3 in terms of the direction given by the District Forum. Therefore, the latter filed a petition under Section 27 of the Act against the company through its Managing Director. Notice of that petition was served on the opposite party, but neither any counter was filed nor any one appeared on its behalf. Thereupon, the District Forum issued non-bailable warrant but the same was not executed. Representative of respondent No.3 alleged that non-bailable warrant was not being executed because the Managing Director (the petitioner) happens to be an influential person and that his client was suffering injustice. After taking cognizance of his statement and adverting to increase in the number of cases in which non-bailable warrants were not being executed by the police, the District Forum passed order dated 14.7.2000 and sentenced the opposite party to imprisonment of two years and imposed fine of Rs.2,000/-. The relevant extracts of that order are reproduced below:

> "Section 27 empowers District Consumer Forum herein in referring to as the Forum to punish the opposite party who fails to comply the order of the forum with imprisonment and fine. Even issuing of notices the JDR is not contemplated for imposing penalty under section 27. Mere failure to comply with the order made by the forum is sufficient to impose punishment. When a decree holder files a petition under section 27 only to bring it to the notice of JDR a show cause notice will be issued by the Forum to JDR comply the order and failure to comply the order he is liable for punishment. It if is in a criminal case for imposing the sentence of imprisonment the presence of the accused is necessary because he has to be questioned with regard to the sentence. To give an opportunity to explain before delivering judgment the presence of the accused is must in criminal cases. As we could see in the case of penalty petitions pending due to non-examination of NBWs punishment can be imposed by the Forum under Section 27 of the Act without the presence of JDR. The JDRs in some cases are not appearing in person as they have engaged an advocate to defend them in the penalty petitions. In some cases where JDRs personally present asking for time for filing counter, after taking two or three adjournments they are also not attending the Court. So as there is no other go, this Forum has been issuing NBWs to get the presence of JDR. In view of the trend of the JDRs avoiding their presence in court and also not available for police in execution of NBWs, we are constrained to impose sentence in view of Section 27 of the Act. We have thoroughly read Section 27 of the Act and satisfy the presence of the JDR is not necessary for imposing punishment. Section 25 of the Act visualizes the enforcement of orders by civil process as if they were decree or order made by a Court of law. Section 27 confirms the quasi criminal sanction for the enforcement byway of punishment with imprisonment or imposing of monitory

penalties. Show cause notice was issued to the JDR after decree holder filed this petition. The JDR appeared through advocate and requested time for filing counter. Counter is not filed. An opportunity is given to the JDR. A reasonable opportunity is given to defend himself in this proceedings. In a criminal proceeding if a person is tried for offence which prescribes a sentence of imprisonment or a fine, he should be given a reasonable opportunity to defend himself. He cannot be sentenced to undergo imprisonment without affording such an opportunity. In the present case also an opportunity is given to the JDR to defend himself. In fact an advocate appeared and filed Vakalat. As counter is not filed he was set ex parte. Even though two months time is given to comply with the order the JDR failed to comply the order. At least he did not prefer appeal for obtaining stay from the State Consumer Redressal Commission or from the High Court. Only to secure his presence and given an opportunity a show cause notice was issued. Even NBWs are issued, his presence could not be secured. In the present socio economic scenario the consumer is victim of many unfair and unethical tactics adopted by a trader. Even after an order consumer is not in a position to realize the decree amount in view of unethical tactics adopted by the JDRs. JDR is aware that NBWs were issued to him. Atleast he did not come forward to pay a part of the decree amount because he was confident that he can avoid arrest. After NBWs were issued JDR making appearance through an advocate in other fresh cases. Advocates are filing Vakalats in fresh cases at the stage of notices subsequent to issue of NBWs in penalty petitions. But JDR avoiding arrest. So in such cases either forum or the decree holder is not in helpless position. Keeping in view the unfair and unethical traders section 27 is incorporated in the Act empowering the Forum to impose punishment with imprisonment and fine when the trader fails to comply the order. Hence we decided to punish the JDR for not complying the order.

While confirming powers on the Forum under Section 13(4) of the Act, the same powers as are vested in the CPC 1908 while trying suits in respect of summoning and enforcing attendance of any dependant or witnesses etc. The Forum is not vested with any powers under criminal procedure except imposing punishment under section 27 of the Act. So even after execution of NBW of the JDR is produced this Forum has to impose punishment when he fails to comply the order as no powers are conferred on the Forum to remand the JDR if produced on execution of NBW. The penal provision Section 27 of the Act is intended only to quash and curb the tendency of recalcitrant party. We are not imposing any sentence of imprisonment which is not provided by the Act. The Act empowers forum to impose punishment on the faulty JDR.

Therefore, in view of the above discussion, we impose punishment on the JDR/opposite party with imprisonment for a term of 2 years. The JDR/opposite party is further imposed to pay a fine amount of Rs.2,000/- (Rupees two thousand only).”

5) The Company challenged the aforementioned order by filing revision before the State Commission. By an order dated 1.12.2000, the State Commission stayed the order of the District Forum subject to the condition that the revision petitioner shall deposit 50% of the amount in terms of the order passed by the District Forum. The revision petitioner failed to comply with the condition embodied in that order. Therefore, the State Commission vide its order dated 30-10-2001 dismissed the revision petition.

As a sequel to the dismissal of the revision, the petitioner was arrested and lodged in civil prison at Visakhapatnam. After about three years, he challenged the orders passed by the District Forum and the State Commission by filing Writ Petition under Article 226 of the Constitution of India. By an order dated 25.4.2005 passed in W.P.M.P.(SR) No.47312 of 2005 {W.P.(SR) No.47130 of 2005}, this Court directed that the petitioner be released on bail on his executing a personal bond for Rs.10,000/- with two sureties for like sum each to the satisfaction of the President of the District Forum, Visakhapanatnam, but due to non-furnishing of the requisite sureties, the petitioner could not be released and as per the report sent by the Registrar of the State Commission, he is still in prison.

In the affidavit filed in support of the writ petition, the petitioner's wife Smt. P. Krishna Kumari has averred that in execution of order dated 14-7-2000 passed by the District Forum, the petitioner could not have been arrested because he was not a party to the petition filed by respondent No.3 against the company under Section 27 of the Act, the District Forum could not have imposed substantive sentence on him without issuing a notice and giving him an opportunity of hearing. Paragraphs 4 to 8 of the affidavit filed by Smt. P. Krishna Kumari read as under:

> "4. I submit that while so the intending purchasers including the 3rd respondent herein got raised several disputes including C.D.No.11/99 of the 3rd respondent herein before the 2nd respondent for a direction to the company to repay the amount paid by him in installments for allotment of the plot and also claimed damages. The company contested the above consumer disputes by raising various pleas including the plea that the 3rd respondent failed to perform his part of obligation. After conducting a detailed enquiry the 2nd respondent by its order dated4.12.1999 was pleased to allow the said consumer dispute and two months time was granted for compliance failing which the 3trd respondent was entitled to interest at the rate of 15 per cent per

annum and the said order became final. As the said order was not complied with the 3rd respondent filed a petition under section 27 of the Consumer Disputes Act complaining that the said order was complied with. Though notice was served on the company and it entered appearance it could not contest the matter and the 2nd respondent by its order dated 14.7.2000 made in P.P. No.61 of 2000 sentenced the company for imprisonment for term of two years and to pay fine of Rs.2,000/. Identical orders were passed on the other P.Ps on the same date against the company with the same punishment.

5. I submit that aggrieved by the said order the company preferred a revision in R.P.No.76 of 2000 before the 1st respondent herein. By the date of the said order only a revision lay under section 17(1)(b) of the Act. The provision for appeal was introduced in 2002. In the said revision the company sought for the suspension of the orders passed in P.P.No.61 of 2000 passed by the 2nd respondent in R.P.I.A.No.927 of 2000. The 1st respondent by its order dated 1.12.2000 was pleased to suspend the order of the 2nd respondent on the condition of the company depositing 50% of the amount directed by the 2nd respondent within three weeks and the balance amount within six weeks from the date and in default the revision stands dismissed. As the company failed to deposit the said amount as directed by the 1st respondent, the 1st respondent by its order dated 13.10.2001 was pleased to dismiss the revision by holding that the company committed default and the order passed in the I.A. worked itself out and the revision petition automatically stands dismissed. The revision was not heard on merits at all.

6. I submit that to the misfortune of the petitioner herein some of the intending purchasers raided the office of the company and got damaged the office and took away the files including the files containing the agreements of sale entered into by the company. Similarly the employees were also taking advantage of the situation of the company and also misused the office files and gave the same to third parties for their monetary gains thereby the office was virtually closed by the year 2000. In the month of December, 2000 the owner of the office premises got the office vacated with the help of his henchmen, thereby there is no office address or premises of the said company from December 2000 onwards and the company has not received any communication or correspondence from anybody. I submit that as the office was closed and there was no communication received from anybody, the company is not aware of the dismissal of the revision petition by the 1st respondent herein.

7. I submit that while the things stood thus the police officials of the Visakhapatnam District arrested the petitioner on 1.11.2003 stating they were arresting the petitioner basing on the non-bailable and conviction warrants issued by the 2nd respondent as confirmed by the 1st respondent and produced before the 2nd respondent and 2nd respondent committed the

petitioner to the Central Prison at Visakhapatnam. As the petitioner has not received the orders of the 1st respondent and I am not aware of the orders passed by the respondents herein, I could not know the correct factual matrix of the situation thereby I could not get the correct information. In fact out of shock and misplacement of the files the petitioner also was unable to give the correct position as well as the nature and number of cases in which he was sent to prison immediately and only in the month of March 2005 I was able to trace out all the information stated above immediately I contacted my counsel and obtained copies of the orders. Therefore there is a delay in preferring the present writ petition and the delay so caused is neither willful nor wanton. Further as the petitioner is the only bread winner for the entire family and as he was confined in the prison , it has become very difficult to raise the funds even to move out of Visakhapatnam to get the details and copies of the order apart from looking after the welfare of the school going children. With great difficulty I was able to get the details and funds for preferring the above writ petition and now I am preferring the above writ petition on behalf of the petitioner herein. Therefore, the delay so occurred is neither willful nor wanton but only for the reasons stated above. If the delay is not condoned the petitioner and I suffer irreparable loss and injury. Further, I state that there are no willful latches from our side in preferring the above writ petition immediately. It is further submitted that by reason of the impugned order, the petitioner is deprived of his right to personal liberty guaranteed under Article 21 of the Constitution of India. Delay in approaching this Court Court, it is humbly submitted, would not disentitle the petitioner to relief.

8. I submit that the order of the 2nd respondent dated 14.7.2000 made in P.P.No.61 of 2000 as confirmed by the 1st respondent in R.P.No.76 of 2000 dated 13.10.2001 is arbitrary, illegal, unconstitutional and violative of the provisions of the Consumer Protection Act, 1986 and rules made thereunder liable to be set aside."

Notice of this petition has been duly served on respondent No.3, but no reply has been filed. Therefore, we have no option but to decide the petition by presuming that the averments contained in the affidavit filed in support thereof are correct.

We have heard learned counsel for the petitioner and carefully perused the record. Since respondent No.3 has not filed written statement to controvert the averments contained in the affidavit of Smt.P. Krishna Kumari and there is no denial of the fact that the petitioner was not impleaded as party to the petition filed by respondent No.3 under Section 27 of the Act, there is no escape from the conclusion that the District Forum could not have passed any order adversely affecting his rights, status and interest. However, the fact of the matter is that, in the process of execution of

order dated 14-7-2000, the petitioner was arrested and lodged to civil prison.

In our opinion, the exercise undertaken by the District Forum which resulted in confinement of the petitioner to civil prison is per se illegal, arbitrary and without jurisdiction and also violative of his fundamental right to life and liberty guaranteed under Article 21 of the Constitution. It is an undisputed position that the petitioner was not impleaded as party to the petition filed by respondent No.3 under Section 27 of the Act. Therefore, the District Forum could not have sentenced him to imprisonment or secured his confinement to civil prison in execution of order dated 14.7.2000.

For the reasons mentioned above, the Writ Petition is allowed. Orders dated 14.7.2000 and 30.10.2001 passed by the District Forum and the State Commission are quashed. The action of the District Forum to secure confinement of the petitioner to civil prison in execution of order dated 14.7.2000 is declared illegal. The petitioner is directed to be released forthwith.

However, with a view to ensure that order dated 4.11.1999 passed by the District Forum in C.D.No.11 of 1999 is implemented, we give liberty to the District Forum to pass fresh order on the petition filed by respondent No.3 under section 27 of the Act. The petitioner is directed to appear before the District Forum on 16th March, 2006. The District Forum is directed to pass appropriate order in the matter after giving reasonable opportunity of hearing to the petitioner which would necessarily mean giving of time to file objections against the proceedings initiated by the District Forum and an opportunity of personal hearing. The District Forum shall pass order as early as possible but latest within a period of four months from the date of receipt of a copy of this order.

The petitioner shall surrender the passport, if any, issued by the competent authority and deposit the same with the District Magistrate, Visakhpatnam within a period of seven days of his release in furtherance of this order. He shall also furnish a written undertaking before the District Magistrate that he shall not leave the country without obtaining prior permission from this Court.

G.S. SINGHVI, CJ

6th Feburary, 2006

G. BHAVANI PRASAD, **J**

Ks/vtv/svs